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EXAMINER

GRAVINI, STEPHEN MICHAEL

| | |
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| ART UNIT | PAPER NUMBER |
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3622

DATE MAILED: 12/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/627,870

Applicant(s)
David H. SPROGIS

Examiner
Stephen M. Gravini

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3622



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11-27-02
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Priority

1. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged. However, the provisional application upon which priority is claimed is not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention (discussed *infra*). Domestic priority can not be granted under statute 119(e) because the provisional application is not described to one skilled in the art of cinema advertising to reasonably convey the information, at the time of filing, that the inventor had possession of the claimed invention in the manner provided by the first paragraph of section 112 of title 35 as filed under section 111(a) or section 363.

Claim Rejections - 35 USC § 101

2. Claims 25-26 are rejected under 35 U.S.C. 101 because the claimed method does not recite a useful, concrete and tangible result under *In re Alappat*, 31 USPQ2d 1545 (Fed. Cir. 1994) and *State Street Bank & Trust Co. v. Signature Financial Group Inc.*, 47 USPQ2d 1596 (Fed Cir. 1998). The independently claimed providing, identifying, generating, and selecting contain recitations of descriptive material (i.e. for storing information or selecting data) that does

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not exhibit any functional interrelationship with the way in which providing, identifying, generating, and selecting are performed; such that the independently claimed invention does not constitute a statutory process, machine, manufacture or composition of matter under 35 USC 101. These independently claimed features are analogous to a book containing instructions or a compact disc containing music which do not recite a useful, concrete and tangible result and are not patentable under 35 USC 101. Because the independently claimed invention is directed to non-functional descriptive material which does not produce a useful, concrete and tangible result, those claims and claims depending from them, are not permitted under 35 USC 101 as being related to non-statutory subject matter. Also the claimed method steps are not within the technological arts because the claims are limited to any structure on machine interaction. The claimed invention is merely an abstract idea without a practical application. However in order to consider those claims in light of the prior art, examiner will assume that those claims recite statutorily permitted subject matter.

Claim Rejections - 35 USC § 112

3. Claims 1-26 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. Those claims recite the steps:

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“a controller for selecting certain stored data ^{for} ~~for~~ transmission to said first digital projector assembly responsive to movie show schedule information regarding a movie that is to be shown in a theatre environment associated with said first digital projector assembly;”

“said processing unit being adapted to provide a first portion to provide a first portion of the data representative of advertisement information to the first digital projector assembly responsive to first theater scheduling information regarding a movie that is to be shown in the first theatre;”

“selecting certain stored data from the computer storage unit for transmission to a first digital projector assembly of said plurality of digital projector assemblies responsive to movie identification information regarding a movie that is to be shown in a theatre environment associated with said first digital projector assembly;”

“common interest identification means for identifying a characteristic that each of the members of a first audience has in common, and for producing common interest information;”or

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“generating common interest data representative of said common interest characteristic”

are not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. Examiner does not find basis in the specification to convey the recited features such that the inventor had possession of the claimed invention at the time of filing. Specifically, the features of movie identification, theatre environment, first theatre scheduling information, common interest identification of an audience, or common interest characteristic are not recited in the specification and such that it would be reasonable to convey to those skilled in the art that the inventor had possession of the claimed invention (i.e. the specifically recited features). Since the independent claims are rejected under 35 USC 112, first paragraph, so are the depending claims. However, in order to consider these claims in light of the prior art, examiner will assume that these features were in possession of the inventor at the time of filing.

4. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Those claims recite the steps:

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“a controller for selecting certain stored data fro transmission to said first digital projector assembly responsive to movie show schedule information regarding a movie that is to be shown in a theatre enviroment associated with said first digital projector assembly;”

“said processing unit being adapted to provide a first portion to provide a first portion of the data representative of advertisement information to the first digital projector assembly responsive to first theater scheduling information regarding a movie that is to be shown in the first theatre;”

“selecting certain stored data from the computer storage unit for transmission to a first digital projector assembly of said plurality of digital projector assemblies responsive to movie identification information regarding a movie that is to be shown in a theatre environment associated with said first digital projector assembly;”

“common interest identification means for identifying a characteristic that each of the members of a first audience has in common, and for producing common interest information;”or

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“generating common interest data representative of said common interest characteristic”

which fail to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Examiner does not find antecedent basis in the specification of the features of movie identification, theatre environment, first theatre scheduling information, common interest identification of an audience, or common interest characteristic and are therefore indefinite under this section of the statute. Since the independent claims are rejected under 35 USC 112, second paragraph, so are the depending claims. Claims 1 and 15 recite said first digital projector assembly which lacks an early positive antecedent basis from that claim. Claim 14 is further rejected under 35 USC 112, second paragraph, as failing to provide antecedent basis for the recited “said second theatre scheduling information.” However, in order to consider these claims in light of the prior art, examiner will assume that these features are not indefinite by having an antecedent basis from the specification.

5. Claims 17-23 are rejected under 35 U.S.C. 112, sixth paragraph, as not setting a limit on how broadly the Office may construe means-plus-function language under the rubric of reasonable interpretation (please see MPEP 2181). The independently claimed storage means, common interest identification means, selection means, and display means are not construed means-plus-function language under the rubric of reasonable interpretation, because the specification does not

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provide a clear limit of patentability. These four separate independently claimed means are merely exemplified after the “for” recitation and may incorporate any function that could be taught in the prior art, such as the features of a shopping mall kiosk, local bank, gasoline pump that accepts credit cards and other systems incorporating storage, common interest identification, selection, and display. In order to consider that claim in light of the prior art, examiner will assume that those claims contain a clear limitation under the broadest reasonable interpretation.

Claim Rejections - 35 USC § 102

6. Claims 1-26 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by non-patent literature reference “Partnership formed” from Screen Digest or the NCN trademark filing of DTDS on December 30, 1999 and are rejected under 35 U.S.C. 102(b) as being clearly anticipated by non-patent literature references “Movies get a chunk” from the Miami Herald, or “Proxima and NCN” from Business Wire, Nemirofsky et al. (US 5,761,601), Ruybal et al. (US 5,801,754), DiFranza et al. (WO 99/36341), or Stern (WO 99/08216), and are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Cho al. (US 5,983,069), Decker et al. (US 6,009,465), Abecassis (US 6,038,367), or non patent literature reference background information from NCNInc.com.

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Claim Rejections - 35 USC § 103

7. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over an obvious variation of the Cyberstar press release dated November 9, 1998 in view of Ballantyne et al. (US 5,133,079) or in view of Hunter (US 6,424,998). The press release discloses a method and system of movie projector theatre advertizing comprising:

a computer storage unit or storage means to receive/store advertisement information which can be initialized (content can be send direction to a Windows NT based server);

a plurality of digital projectors or digital projector assemblies receiving information or data from a computer storage unit (see the Shawn Whitcomb statement which implicitly uses digital projector assemblies since that company delivers in-theater media and in-theater media is delivered by digital projector assemblies recognized by the DTDS trademark filed as early as 1999); and

a controller or processing unit for selecting data for transmission in response to signals from an interrelated component (disclosed as Loral Skynet-operated satellites for video and data delivery when used in conjunction with the Windows NT based server). The press release also implicitly discloses the claimed projector computer communications including networking, assigned movie time and location including response, representative advertisement information composite framing, and attendance feedback including first showing information or exposure log reporting. These features are implicit because to those skilled in the art of marketing and advertising, each is a necessary component to marketing and advertising. The press release

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discloses the invention, recited by the applicants, except for the claimed movie identification input unit and the claimed common interest identification means. Ballantyne teaches that it is known to provide a movie identification unit (column 4 lines 20-26) and a common interest identification means (column 6 lines 24-55 in which membership implies common interest identification). Hunter teaches that it is known to provide a movie identification unit (column 10 line 6) and a common interest identification means (column 5 line 5 in which demographic analysis implies common interest identification). It would have been obvious to one skilled in the art of cinema advertising to combine the teachings of the Cyberstar press release with the teachings of Ballantyne or Hunter to provide the claimed movie identification input unit and the claimed common interest identification means for the purpose of allowing inexpensive and reliable cinema advertising. Furthermore, the claimed movie identification input unit and the claimed common interest identification means are merely non-functional descriptive material and do not patentably distinguish the claimed invention from the prior art. Both the claimed movie identification input unit and the claimed common interest identification means are merely data that is not manipulated to change a structure or process. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore it would have been further obvious to a person of ordinary skill in the art at the time the invention was made to claim any type of identification input or any type of identification means

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because such input or means does not functionally relate to the steps in the invention claimed and because the subjective interpretation of the nature does not patentably distinguish the invention.

Response to Arguments

priority

Applicant argues that the provisional application is sufficient to satisfy the statutory requirement under 35 USC 112 for the claimed invention. Examiner disagrees as discussed below under the response to the new matter, enablement, indefiniteness, means/function rejections below.

non-statutory subject matter rejections

Applicant argues that claims 25 and 26 have been amended to overcome the non-statutory subject matter rejection. However in response to this prior Office action, examiner finds that no amendments have been made to claims 25 or 26. Therefore the independently claimed invention is considered to contain non-statutory subject matter rejections.

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new matter, enablement, indefiniteness, means/function rejections

Applicant argues that the specification daemon 86 on pages 37-38 and shown in figure 6 as it relates to figure 2 provides reasonable conveyance to skilled artisans that the inventor had possession of the claimed feature. Examiner and skilled artisans consider the specification discussion of the schedule daemon to be a process that connects job contents to individual movie showings including prioritizing, requesting, approving. The claimed controller for selecting data responsive to movie show schedule information is not considered to be reasonably implied from the specification (i.e. examiner does not consider the data selection in response to movie schedule information to be reasonably conveyed). Applicant also argues exemplary software and hardware for servers 24 discussed on pages 7-8, 13, 15-16, 21-22 and shown in figures 2 and 6 provides reasonable conveyance to skilled artisans that the inventor had possession of the claimed feature. Examiner and skilled artisans consider those discussions and figures to relate to the structure necessary to allow data transmission. The claimed controller for selecting data responsive to movie show schedule information is not considered to be reasonably implied from those discussions and figures.

Applicant argues that the specification daemon 86 on pages 37-38 and shown in figure 6 as it relates to figure 2 provides reasonable conveyance to skilled artisans that the inventor had possession of the claimed feature. Examiner and skilled artisans consider the specification discussion of the schedule daemon to be a process that connects job contents to individual movie showings including prioritizing, requesting, approving. The claimed processing unit being

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adapted to provide a first portion to provide a first portion of the data representative of advertisement information to the first digital projector assembly responsive to first theater scheduling information regarding a movie that is to be shown in the first theatre is not considered to be reasonably implied from the specification (i.e. examiner does not consider the first digital projector assembly responsive to first theater scheduling information to be reasonably conveyed). Applicant also argues exemplary software and hardware for servers 24 discussed on pages 7-8, 13, 15-16, 21-22 and shown in figures 2 and 6 provides reasonable conveyance to skilled artisans that the inventor had possession of the claimed feature. Examiner and skilled artisans consider those discussions and figures to relate to the structure necessary to allow data transmission. The claimed controller for selecting data responsive to movie show schedule information is not considered to be reasonably implied from those discussions and figures.

Applicant argues that the specification daemon 86 on pages 37-38 and shown in figure 6 as it relates to figure 2 provides reasonable conveyance to skilled artisans that the inventor had possession of the claimed feature. Examiner and skilled artisans consider the specification discussion of the schedule daemon to be a process that connects job contents to individual movie showings including prioritizing, requesting, approving. The claimed selecting certain stored data from the computer storage unit for transmission to a first digital projector assembly of said plurality of digital projector assemblies responsive to movie identification information regarding a movie that is to be shown in a theatre environment associated with said first digital projector assembly is not considered to be reasonably implied from the specification (i.e. examiner does not

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consider the first digital projector assembly responsive to scheduling information to be reasonably conveyed). Applicant also argues exemplary software and hardware for servers 24 discussed on pages 7-8, 13, 15-16, 21-22 and shown in figures 2 and 6 provides reasonable conveyance to skilled artisans that the inventor had possession of the claimed feature. Examiner and skilled artisans consider those discussions and figures to relate to the structure necessary to allow data transmission. The claimed controller for selecting data responsive to movie show schedule information is not considered to be reasonably implied from those discussions and figures.

Applicant argues that the features rejected from claims 17 and 25 are overcome by specification discussion and figure illustration similar to the amended claims above. However examiner and skilled artisans would not find the claimed subject matter to be reasonably conveyed from the specification such that the inventor had possession of the claimed invention. The specification and figures are considered computer network data processing while the claims related to movie information scheduling. It is difficult to find the commonality between the specification/figures and the claims to overcome the 35 USC 112 rejections.

Applicant argues that sufficient structure exists to overcome the 35 USC 112, sixth paragraph rejection. However the process discussed from the specification is not considered to provide the adequate structure to overcome that rejection.

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anticipatory rejections

Applicant argues that the date of conception of the claimed invention overcomes each of the prior art references used in the rejections. The affidavit submitted does not provide convincing proof that the applicant had possession of the claimed invention as stated in the affidavit. The affidavit supports conception of detailed knowledge of network information processing but not the claimed movie theatre information transmission as claimed.

Examiner understands the claimed invention generally to be an advertisement computer distribution system for sending advertisement data to digital projectors as applied to movies in a theater environment.

Both references clearly anticipate the claimed invention under section (a) of 35 USC 102 on their face because both references disclose movie theater advertising through the use of digital visual presentations. Digital visual presentations implicitly defines a computer distribution system for sending advertisement data.

All of the references clearly anticipate the claimed invention under section (b) of 35 USC 102 on their face because those references disclose movie theater advertising through the use of computer digital visual presentations. Applicant argues that Nemirofsky does not teach the selection of content response to information regarding a specific viewing audience and no responsive control based on audience information. Under the second full paragraph of column 2, Nemirofsky discloses on-line creation of audio-visual programs customized for individual retail chains, stores, or even aisles within retail establishments. Also disclosed is unique programs

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tailored to a particular demographic market including time of day tailoring. This programming and tailoring is considered to teach the argued selection of content response to information regarding a specific viewing audience and responsive control based on audience information because it can be implied that programs customized for a lingerie store such as Victoria's Secret would probably be for a different viewing audience than a program customized for an automobile parts store such as Pep Boys. Applicant argues that Ruybal does not disclose the distribution of advertisements or the distribution of stored data responsive to information regarding an audience in each theater. At column 3 under the first paragraph of the DETAILED DESCRIPTION, Ruybal discloses a motion picture theater auditorium used to conduct interactive events such as business meetings, research session, sports viewing, or polling. To those skilled in the art, business meetings, research session, sports viewing, or polling are types of data that encompass the meaning of advertisement distribution as claimed by the applicant. The expressly disclosed interactive theater network system expressly teaches applicant's argued distribution of stored data responsive to information regarding an audience in each theater. Applicant argues that there is no disclosure of the selection of certain advertisement data responsive to movie show schedule information that is dynamic with regard to each location in the DiFranza reference. As defined by the applicant, the selection of certain advertisement data responsive to schedule information that is dynamic with regard to each location is consistent with the disclosure of the DiFranza reference whether the dependent variable is a movie show or an elevator display. It can be implied that DiFranza clearly anticipates the claimed invention as argued by the applicant because whether the variable is a

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movie show or an elevator display, both the claimed invention and DiFranza perform the same function, using the same means or method, and give the same result. Applicant also argues that Stern does not disclose the selection of certain advertisement data responsive to movie show schedule information. In the penultimate paragraph of page 2 of Stern, the disclosed displayed advertisement on television monitors positioned throughout a store implicitly teaches the argued selection of certain advertisement data responsive to movie show schedule information, because the audience within a retail establishment or store is compared to the television and radio audiences. To those skilled in the art, a television audience is selected to receive certain advertisements responsive to movie schedule information (i.e. a television viewing audience watching Stallone's Rocky would receive different advertisement information than a television viewing audience watching Disney's Snow White).

All of the references argued by the applicant are considered to clearly anticipate the claimed invention either implicitly or expressly under section (b) of 35 USC 102. Applicant argues that the broad concepts, particularly presented in claims 9, 15, 17, and 25, are not found in those prior art references. However the examiner considers those argued features to merely concepts which are old and well known. Those concepts are so old and well known that many prior art references clearly anticipate and are presented in this and previous Office action.

Applicant argues that the NCNInc.com reference is not prior art. However, the affidavit submitted does not provide convincing proof that the applicant had possession of the claimed invention as stated in the affidavit. The affidavit supports conception of detailed knowledge of

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network information processing but not the claimed movie theatre information transmission as claimed.

Applicant argues that Cho does not disclose the selection of certain advertisement data responsive to movie show schedule information. In the abstract of Cho, the disclosed displayed advertisement on television monitors positioned throughout a store implicitly teaches the argued selection of certain advertisement data responsive to movie show schedule information, because the audience within a retail establishment or store can be compared to the television audiences. To those skilled in the art, a television audience is selected to receive certain advertisements responsive to movie schedule information.

Applicant argues that Decker does not disclose the selection of certain advertisement data responsive to movie show schedule information. In the abstract of Decker, the remote video delivery system from a hotel office to a hotel room implicitly teaches the argued selection of certain advertisement data responsive to movie show schedule information, because the hotel room movie viewer can accept or reject the billing price of the selected movie. This acceptance or rejection is equivalent to the claimed advertisement data. To those skilled in the art, a hotel room movie viewer is selected to receive certain advertisements responsive to movie schedule information.

All of the references argued by the applicant are considered to clearly anticipate the claimed invention either implicitly or expressly under section (e) of 35 USC 102. Applicant argues that the broad concepts, particularly presented in claims 1, 9, 15, 17, and 25, are not found

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in those prior art references. However the examiner considers those argued features to merely concepts which are old and well known. Those concepts are so old and well known that many prior art references clearly anticipate and are presented in this and previous Office action.

obviousness rejections

Examiner considers the primary reference Cyberstar, to disclose the selection of certain advertisement data responsive to movie show schedule information as discussed above in the rejection. The obvious variation of that primary reference is discussed in the secondary references Ballantyne or Hunter, also discussed above. With respect to the argued features not being disclosed or considered as prior art, examiner considers those references to be an obvious variation in the prior art, as discussed in the rejection, and considers the arguments duplicative or arguments made in previous rejections. Examiner's consideration of the claimed invention and arguments of patentability to be consistent with the responses made to the arguments under the priority, non-statutory subject matter rejections, new matter, enablement, indefiniteness, means/function rejections, and anticipatory rejections. (Please see the arguments above).

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references and because they do not clearly point out the patentable novelty which he or she thinks the claims present in

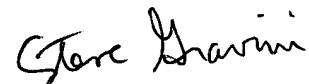
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view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

Conclusion

8. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Steve Gravini whose telephone number is (703) 308-7570 and electronic transmission / e-mail address is "steve.gravini@uspto.gov". Examiner can normally be contacted Monday through Friday from 6:00 a.m. to 3:30 p.m. **If applicant chooses to send information by e-mail, please be aware that confidentiality of the electronically transmitted message cannot be assured.** Please see MPEP 502.02. Information may be sent to the Office by facsimile transmission. The Official Fax Numbers for TC-3600 are:

| | |
|---------------------------|-----------------------|
| After-final | (703) 872-9327 |
| Official | (703) 872-9326 |
| Non-Official/Draft | (703) 872-9325 |



STEPHEN GRAVINI

PRIMARY EXAMINER

smg

December 23, 2002